

PEARSON, J.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

JASON WESTERFIELD,)	
)	CASE NO. 1:10CV2145
Petitioner,)	(1:05CR0428)
)	
v.)	JUDGE BENITA Y. PEARSON
)	
UNITED STATES OF AMERICA,)	<u>MEMORANDUM OF OPINION</u>
)	<u>AND ORDER</u>
Respondent.)	[Resolving ECF No. 68]

Before the Court is Jason Westerfield’s motion to dismiss without prejudice his petition filed pursuant to [28 U.S.C. § 2255](#)– seeking to vacate, set aside or correct sentence by a person in federal custody. ECF Nos. [68](#) and [61](#). The Government has responded in opposition to both. ECF Nos. [69](#) and [67](#).

Westerfield is represented by counsel whom has assured the Court that “they have discussed this dismissal request with Mr. Weterfield and state Mr. Westerfield is in agreement with this request.” [ECF No. 68 at 2](#). The Court interprets this statement to mean that Westerfield fully understands that while a dismissal without prejudice will not prevent him, at a later time, from refiling

(1:09CV1351)

another petition pursuant to 28 U.S.C. § 2255, that later filed petition may not be successful.

Without rendering a decision on the issues presented in Westerfield's § 2255 petition and motion to dismiss or the government's oppositions, the Court grants Westerfield's dismissal without prejudice.

Accordingly, the petition pursuant to § 2255 is hereby dismissed without prejudice. Jason Westerfield's conviction and sentence remain as imposed. This matter is closed.

The Court certifies, pursuant to [28 U.S.C. § 1915\(a\)\(3\)](#), that an appeal from this decision could not be taken in good faith, and that there is no basis upon which to issue a certificate of appealability. [28 U.S.C. §2253\(c\)](#); [Fed. R. App. P. 22\(b\)](#).

IT IS SO ORDERED.

September 11, 2012
Date

/s/ Benita Y. Pearson
Benita Y. Pearson
United States District Judge